

M.L., Appellant

**DEPARTMENT OF THE NAVY, MARINE
CORPS-STATIONS, Camp LeJeune, NC,
Employer**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 11, 2012 appellant filed a timely appeal from the May 18, 2012 Office of Workers' Compensation Programs' (OWCP) schedule award decision. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the claim for a schedule award.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a ratable hearing loss entitling him to a schedule award.

FACTUAL HISTORY

On February 22, 2012 appellant, then a 63-year-old maintenance inspector, filed an occupational disease claim alleging that he sustained noise-induced hearing loss due to factors of

¹ 5 U.S.C. § 8101 *et seq.*

his employment. He noted that he worked in the carpenter shop with power tools such as table saws, planers, jointers, arm saws, skill saws, drills and air tools. Appellant also indicated that he worked at a steam plant with coal pulverizers, air equipment and other noisy equipment.

By letters dated February 27, 2012, OWCP requested additional factual information from both appellant and the employing establishment. Appellant was requested to provide information regarding his employment history, when he related his hearing loss to conditions of employment and all nonoccupational exposure to noise. OWCP also requested that he provide medical documentation pertaining to any prior treatment he received for ear or hearing problems. It requested that the employing establishment provide noise survey reports for each site where appellant worked, the sources and period of noise exposure for each location and whether he wore ear protection.

In a February 22, 2012 letter, appellant described his work history. He indicated that he started working for the employing establishment in 1981 as a grocery checker and thereafter worked as a boiler tender, a wood worker, a maintenance mechanic, kitchen and bakery equipment repairer and again as a maintenance mechanic. Appellant reported the type of noise he was exposed to in each of his jobs. He noted that he did not have a history of hearing problems and did not participate in any hobbies that could be related to hearing loss. Appellant stated that he was informed in 1997 that he had a hearing loss as indicated by a hearing conservation test conducted by the employing establishment. The employing establishment also submitted results from various audiograms taken since November 8, 1984 and other documents acknowledging that appellant might have an employment-related hearing loss.

By letter dated April 12, 2012, OWCP referred appellant, together with a statement of accepted facts and the medical record, to Dr. Charles D. Beasley, a Board-certified otolaryngologist, for a second opinion as to whether he sustained hearing loss causally related to his federal employment. In an April 26, 2012 report, Dr. Beasley reported normal examination findings. He diagnosed bilateral sensorineural hearing loss and opined that the hearing loss was a result of appellant's history of noise exposure in his federal employment. Dr. Beasley recommended that appellant be evaluated to determine if hearing aids would be beneficial. An audiogram conducted for Dr. Beasley on April 26, 2012 reflected testing at 500, 1,000, 2,000 and 3,000 Hertz (Hz) and showed the following decibel losses: 15, 5, 25 and 35 in the right ear and 15, 0, 35 and 40 in the left ear.

On May 14, 2012 an OWCP medical adviser reviewed Dr. Beasley's findings and determined that appellant had no ratable hearing loss. He did not recommend authorization of hearing aids.

On May 18, 2012 OWCP accepted appellant's claim for bilateral sensorineural hearing loss. However, it also found that the hearing loss was not severe enough to be considered ratable under the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (6th ed. 2009) (A.M.A., *Guides*).

LEGAL PRECEDENT

The schedule award provision of FECA and its implementing regulations² set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* (6th ed. 2009) has been adopted by OWCP for evaluating schedule losses and the Board has concurred in such adoption.³

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*. Using the frequencies of 500, 1,000, 2,000 and 3,000 Hz, the losses at each frequency are added up and averaged. Then, the fence of 25 decibels is deducted because, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday speech under everyday conditions.⁴ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss. The binaural loss is determined by calculating the loss in each ear using the formula for monaural loss; the lesser loss is multiplied by five, then added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss. The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.⁵ The Board has also noted OWCP's policy to round the calculated percentage of impairment to the nearest whole number.⁶

ANALYSIS

The Board finds that OWCP properly denied appellant's claim for a schedule award because the evidence of record does not establish that he sustained a ratable hearing loss.

OWCP referred appellant's claim to Dr. Beasley for a second opinion examination. In an April 26, 2012 report, Dr. Beasley reported examination findings and diagnosed bilateral sensorineural hearing loss as a result of appellant's history of noise exposure in his federal employment. An OWCP medical adviser concurred with Dr. Beasley's findings, reviewed the audiogram taken on behalf of Dr. Beasley, and concluded that appellant had no ratable hearing loss that warranted a schedule award according to the A.M.A., *Guides*. Although OWCP accepted appellant's claim for bilateral sensorineural hearing loss, it denied his claim for a schedule award.

² 20 C.F.R. § 10.404.

³ *R.D.*, 59 ECAB 127 (2007); *Bernard Babcock, Jr.*, 52 ECAB 143 (2000); *see also* 20 C.F.R. § 10.404.

⁴ *See* A.M.A., *Guides* 250.

⁵ *E.S.*, 59 ECAB 249 (2007); *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001).

⁶ *Robert E. Cullison*, 55 ECAB 570 (2004); *J.H.*, Docket No. 08-2432 (issued June 15, 2009). *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(b)(2)(b) (September 2010).

The Board finds that OWCP's medical adviser correctly applied the proper procedures to determine that appellant did not sustain a ratable hearing loss. An audiogram conducted on April 26, 2012 reflected testing at 500, 1,000, 2,000 and 3,000 Hz and showed the following decibel losses: 15, 5, 25 and 35 in the right ear and 15, 0, 35 and 40 in the left ear. These thresholds total 80 and 90 decibels, respectively, for averages of 20 and 22.5 decibels. Because these averages are below the fence of 25 decibels, appellant is deemed to have no impairment in his ability to hear everyday sounds under everyday listening conditions.⁷ This does not mean that appellant has no hearing loss, but only shows that the extent or degree of his hearing loss is not sufficient to show a practical impairment in hearing according to the A.M.A., *Guides*. Thus, the Board finds that OWCP's medical adviser properly determined that appellant had no ratable hearing loss and that OWCP properly denied appellant's claim for schedule award.

On appeal, appellant contends that the amount of hearing loss listed in the decision is not consistent with the amount of hearing loss he received from his physician. While OWCP accepted that he sustained sensorineural hearing loss due to noise exposure from his federal employment, the medical evidence establishes that he did not sustain a ratable impairment according to the A.M.A., *Guides*. The A.M.A., *Guides* provides the formula for computing the percentage of employment-related hearing loss and there is no provision for granting a schedule award when the average of appellant's hearing threshold falls below the fence of 25 decibels. Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained a ratable hearing loss entitling him to a schedule award.

⁷ See *L.F.*, Docket No. 10-2115 (issued June 3, 2011).

ORDER

IT IS HEREBY ORDERED THAT the May 18, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 27, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board